

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

DAVID M. SIMON and MARGARET)
S. SIMON,)
)
Plaintiffs,) 8:10CV201
)
v.)
)
I.R.S.,) MEMORANDUM AND ORDER
)
Defendant.)
)

This matter is before the Court on its own motion. On October 12, 2010, the Court ordered plaintiffs to complete service of process on defendant, the Internal Revenue Service, by January 28, 2011 (Filing No. [11](#)). The Court warned plaintiffs that failure to complete service of process could result in dismissal of this matter. ([Id.](#)) Plaintiffs have not completed service of process and the time in which to do so has now passed.

Defendant is an agency of the United States. In order to effect service of process on defendant, plaintiffs must comply with [Federal Rule of Civil Procedure 4\(i\)](#), which states:

- (i) Serving the United States and Its Agencies, Corporations, Officers, or Employees.
 - (1) United States. To serve the United States, a party must:
 - (A) (I) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought -- or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk -- or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) Agency; Corporation; Officer or Employee Sued in an Official Capacity. To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

Fed. R. Civ. P. 4(i).

Here, plaintiffs completed and returned a summons form addressed to "IRS." (See Filing No. 12.) Thus, plaintiffs have not properly served defendant in accordance with Federal Rule of Civil Procedure 4(i), and the time in which to do so has now passed. However, on the Court's own motion, plaintiffs shall have an additional 30 days in which to properly serve defendant. In the absence of proper service on defendant, plaintiffs' claims will be dismissed without prejudice and without further notice.

IT IS ORDERED:

1) On the Court's own motion, plaintiffs shall have an additional 30 days in which to properly serve defendant.

Failure to do so will result in this matter being dismissed without prejudice and without further notice.

2) The clerk of the court is directed to set a pro se case management deadline in this case using the following text:
April 14, 2011: Deadline for plaintiffs to properly serve defendant.

DATED this 15th day of March, 2011.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

* This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the Court has no agreements with any of these third parties or their Web sites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.